STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the investigation, on the Commission's own motion, into the electric supply reliability plans of Michigan's electric utilities for the years 2017 through 2021.	Case No. U-18197
In the matter, on the Commission's own motion, to open a docket to implement the provisions of Section 6w of 2016 PA 341 for **CONSUMERS ENERGY COMPANY'S** service territory.	Case No. U-18239
In the matter, on the Commission's own motion, to open a docket to implement the provisions of Section 6w of 2016 PA 341 for **DTE ELECTRIC COMPANY'S** service territory.	Case No. U-18248
In the matter, on the Commission's own motion, to open a docket to implement the provisions of Section 6w of 2016 PA 341 for **UPPER MICHIGAN ENERGY RESOURCES CORPORATION'S** service territory.	Case No. U-18253
In the matter, on the Commission's own motion, to open a docket to implement the provisions of Section 6w of 2016 PA 341 for **UPPER PENINSULA POWER COMPANY'S** service territory.	Case No. U-18254
In the matter, on the Commission's own motion, to open a docket to implement the provisions of Section 6w of 2016 PA 341 for **CLOVERLAND ELECTRIC COOPERATIVE'S** service territory.	Case No. U-18258

At the June 15, 2017 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

Background

On March 10, 2017, the Commission issued an order in Case Nos. U-18239 *et al*., (March 10 order) that directed the Commission Staff (Staff) to consult with the Midcontinent Independent System Operator, Inc. (MISO) and other parties to:

> 1. Continue to examine resource adequacy issues as part of the annual assessment in Case No. U-18197.
>
> 2. Develop recommendations regarding requirements for capacity demonstrations for electric utilities, cooperatives, municipalities, and [alternative electric suppliers or AESs] in this state subject to [the State Reliability Mechanism or SRM], including filing requirements.
>
> 3. Develop recommendations regarding load forecasts, planning reserve margin requirements and locational requirements for capacity resources.
>
> 4. Develop recommendations regarding the capacity obligations for load that pays an SRM charge to a utility, including MISO's annual [Planning Reserve Auction or PRA].

March 10 order, p. 19.

Every regulated electric utility, AES, cooperative electric utility, and municipally-owned electric utility will be required by Section 6w(8) of 2016 PA 341 (Act 341), MCL 460.6w(8), to demonstrate that it owns or has contractual rights to sufficient capacity to meet its capacity obligations under the law. Given the compressed schedule and the need for certainty to plan for capacity requirements under the timeframe set forth in Section 6w, as well as the directive from the Legislature to establish the capacity obligations for all providers, the Commission is engaging

stakeholders through briefing and technical conferences to solicit input on the capacity obligations. Thus, on May 11, 2017, the Commission issued a follow-up order in Case Nos. U-18197 *et al.* reinforcing the Commission's determination to address certain issues related to its implementation of MCL 460.6w through briefing and technical conferences (May 11 order). Specifically, the format for the demonstration required of an electric utility by MCL 460.6w(8)(a) that the utility "owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable" for the "planning year beginning 4 years after the beginning of the current planning year" will be determined through collaborative efforts in the technical conferences, along with the format for the demonstrations required of AESs, cooperative electric utilities, and municipally-owned electric utilities under MCL 460.6w(8)(b). Thus, in the May 11 order, the Commission informed Consumers Energy Company (Consumers) and DTE Electric Company (DTE Electric) that their recently-filed SRM cases and their currently-pending general electric rate cases[1] would not be the forums in which these issues would be decided.

In the May 11 order, the Commission afforded stakeholders the opportunity to provide comments and reply comments regarding three threshold issues. Initial stakeholder comments were due on May 26, 2017, and reply comments were due on June 5, 2017. The Commission indicated that on June 15, 2017, it would issue an order providing guidance on the threshold issues.

A technical conference took place on June 8, 2017, and three additional technical conferences have been scheduled to take place on June 29-30, 2017, and July 10, 2017. Pursuant to the

[1] Consumers' rate case docket is Case No. U-18322, and DTE Electric's rate case docket is Case No. U-18255.

May 11 order, on August 1, 2017, the Staff will file a Staff Report and Recommendations[2] regarding the accomplishments achieved during the technical conferences, and another round of comments will follow. The Commission intends to issue an order at the regularly scheduled Commission meeting on September 28, 2017, that will make the final determinations required by MCL 460.6w for establishment of the capacity demonstration process required in conjunction with the SRM provisions of Act 341.

Background

The Federal Energy Regulatory Commission (FERC) recognized the authority of states over resource adequacy in approving the MISO resource adequacy construct. *See*, 16 USC 824(a), (b)(1); *Midwest Indep Transmission System Operator, Inc.*, 153 FERC ¶ 61,229, pp. 23-24 (2015). Unlike capacity markets in northeastern regional transmission organizations (RTOs) with predominantly deregulated electric systems, the MISO capacity market was not designed as the primary mechanism to ensure resource adequacy. Rather, MISO's capacity market was intended to complement state resource adequacy authorities and actions, such as retail rate regulation of vertically-integrated utilities and integrated resource planning. *Id.* Accordingly, the MISO capacity market serves as a mechanism to sell and buy capacity in the near-term (i.e., current year) to allow for a more efficient exchange of planning resources across energy providers and local planning zones.[3] MISO and other entities have explained that the MISO market, on its own, does

[2] On June 30, 2017, the Staff will be filing a separate report reviewing the data submitted by providers and reporting on the overall capacity outlook for Michigan under the pre-Act 341 framework for the 2017 through 2021 time period.

[3] A map of local resource zone (LRZ or Zone) boundaries is available here: https://www.misoenergy.org/_layouts/MISO/ECM/Download.aspx?ID=168926

not provide the necessary price signals to new or existing generators in order to meet long-term resource adequacy needs.[4]

Notwithstanding, there are certain incentives and requirements built into the MISO tariff, such as the local clearing requirement (LCR), that attempt to encourage the availability of adequate electricity supplies at the local level.[5] As set forth in MISO's tariff, the LCR represents the minimum amount of generation that must be physically located within the LRZ in order to meet reliability criteria (a one day in ten loss of load expectation (LOLE)) after taking into account import capability.[6] The LCR applies to the entire Zone, with the zonal capacity auction prices affected if this requirement is not met. Specifically, entities participating in the auction, whether through the self-supply option or not, would be required to pay the cost of new entry (CONE), which is based on the cost of construction of new gas combustion turbine generation, if the local planning Zone as a whole does not meet the LCR. Entities that opt out of the auction by submitting a fixed resource adequacy plan (FRAP) must show they have enough resources located in the Zone to meet their proportional share of the LCR. When the Zone is short of the LCR, there is no mechanism under the MISO capacity construct to ensure that new generation or other forms of capacity would actually be constructed or otherwise secured. And by not meeting the LCR, it

[4] *See,* http://www.senate.michigan.gov/committees/files/2016-SCT-ENERGY-04-27-1-01.PDF; and https://www.misoenergy.org/Library/Repository/Report/IMM/2015%20State%20of%20the%20Market%20Report.pdf.

[5] *See, Midwest Indep Transmission System Operator, Inc.,* 139 FERC ¶ 61,199, p. 41 (2012); 153 FERC ¶ 61,229, pp. 23-24 (2015).

[6] "Local Clearing Requirements" are defined as "the minimum amount of Unforced Capacity that is physically located within [local resource zone] that is required to meet the [loss of load expectation] LOLE while fully using the Capacity Import Limit [CIL] for such [local resource zone]." FERC Electric Tariff, Module E-1, 1.365a, Local Clearing Requirement (LCR), 1.0.0.

also means that the probability of an outage due to lack of supply in that region is higher according to MISO's LOLE study.

With additional plant retirements in Michigan, it is expected that MISO Zone 7, which covers the Lower Peninsula (with the exception of the southwest portion of the state, which is in PJM Interconnection, LLM's (PJM) territory) may not meet the MISO LCR in the future. Thus, new capacity resources will be needed to ensure the LCR can be met over time. Currently, the LCR in Zone 7 represents approximately 95% of the overall planning reserve margin requirement (PRMR); thus, the large majority of resources must be physically in the Zone in order for the LCR to be met. Increases in the import capability or improved operating performance of the existing fleet would decrease the proportion of resources that must be located within the Zone, but the ratio has been fairly steady in the mid-90% range. It is not, however, fixed, and can increase or decrease in any given year based on MISO's studies.

In 2016, Michigan enacted a new statutory framework for resource adequacy as part of Act 341 to ensure that all energy providers – including AESs, municipal utilities, electric cooperatives, and regulated electric utilities – contribute to the state's long-term electric capacity needs. Under this framework,[7] the Commission must determine the capacity obligations for individual electric providers and create a process to evaluate whether such obligations are met. In setting the obligations, the law directs the Commission to request technical assistance from MISO

[7] The law was passed when a MISO proposal for a forward capacity auction applicable to retail choice states, including Michigan, was pending before the FERC. Accordingly, the law directed the Commission to evaluate whether the forward auction or alternative prevailing state compensation mechanism would be more reasonable and cost-effective. Section 6w(2) of Act 341, MCL 460.6w(2), also provided a backstop, known as the state reliability mechanism (SRM), in the event that the MISO proposal was not approved by September 30, 2017. With FERC's rejection of the MISO proposal, this left the backstop SRM as the only option under Michigan law. *Midcontinent Independent System Operator, Inc.*, 158 FERC ¶ 61,128 (2017); MCL 460.6w(1) and (2).

in determining the LCR and PRMR. The law also provides remedies in instances when an electric provider is unable to demonstrate it has procured adequate capacity to cover its load, including allowing for uncovered AES load to be assessed a capacity charge determined by the Commission and paid to the incumbent utility in exchange for meeting that load's capacity obligations. MCL 460.6w.

The Threshold Questions

Comments on the threshold questions were filed by Michigan Electric and Gas Association (MEGA), the Residential Customer Group (RCG), Consumers, Energy Michigan, the Staff, the Association of Businesses Advocating Tariff Equity (ABATE), CNE, WPPI Energy (WPPI), DTE Electric, Indiana Michigan Power Company (I&M), Wolverine Power Supply Cooperative, Inc. (Wolverine), and Cloverland Electric Cooperative (Cloverland); and reply comments were filed by DTE Electric, Consumers, ABATE, Energy Michigan, CNE, and the Michigan Municipal Electric Association (MMEA). A discussion of the threshold questions follows.

1. Should the schedule laid out in Section 6w(8), MCL 460.6w(8), for capacity demonstrations be adhered to, or should any of these deadlines be adjusted as allowed under Section 6w(10), MCL 460.6w(10), to ensure proper alignment with MISO's procedures and requirements? If a stakeholder recommends that the dates should be adjusted, please describe what revisions should be made.

Under MCL 460.6w(8)(a) and (b), capacity demonstrations are required from electric utilities by December 1 of each year; and from AESs, cooperatives, and municipal utilities by the seventh business day of February of each year. However, MCL 460.6w(10) provides that "The commission shall adjust the dates under this section if needed to ensure proper alignment with the appropriate independent system operator's procedures and requirements."

The Staff, the RCG, Wolverine, WPPI, MEGA, CNE, MMEA, and Energy Michigan support (to varying degrees) the concept of coordinating the schedule for the Section 6w requirements with

the schedule established for MISO resource adequacy requirements, which would likely result in moving deadlines further out because the MISO PRA is in April. DTE Electric recommends adhering to the schedule laid out in Section 6w(8). ABATE and Consumers suggest that the deadlines set in Section 6w(8) should be moved further in, such as moving the February 7 deadline to January 7 in order to allow time for a Commission order by the last business day of February 2018 (ABATE), or by February 15 (Consumers).

The Commission finds that the schedule laid out in Section 6w(8) should be implemented. That schedule not only represents the Legislature's intent, but also falls midway between the schedules proposed by the commenters. The Commission finds that proper alignment with MISO's procedures and requirements can be achieved applying the schedule provided in the statute. The Commission will attempt to issue orders on any deficiencies in LSEs' capacity demonstrations as soon as practicable and, ideally, before the PRA.

2. Should there be a uniform methodology for capacity demonstration, both among types of providers (investor-owned utilities, rural electric cooperatives, municipally-owned utilities, and AESs) and among service territories?

Energy Michigan, the Staff, Cloverland, Wolverine, DTE Electric, WPPI, MEGA, and ABATE support utilization of a uniform methodology applied to all types of providers and service territories. Consumers supports a uniform methodology for all types of providers but perhaps not for different service territories. MMEA, CNE, and the RCG posit that the Commission should be open to the use of different capacity demonstration methodologies for different providers. I&M, which operates in the PJM RTO territory, states that a "uniform methodology would be

inconsistent with the fact that there are two RTO/ISOs [independent system operators] that operate in Michigan, MISO and PJM." I&M's comments, p. 2.[8]

The Commission agrees with the majority of commenters that a uniform methodology for capacity demonstration should be applied to all types of providers and all service territories. As several commenters pointed out, Section 6w mandates the need for all providers to prove, on an annual basis, that they have sufficient and reliable capacity resources for serving Michigan retail customers. Incumbent utilities are treated, by the statute, as backups to the AESs with respect to provider of last resort obligations in the absence of an adequate AES demonstration, and Section 6w makes no distinction between the types of capacity demonstrations that should be required from these different types of providers; nor does it make a distinction for any other type of provider or service territory. I&M may have targets that are different from the targets set for other LSEs affected by the capacity demonstration requirement, but the Commission finds that the format should be uniform. Equitable treatment is called for, and the Commission intends to adopt a process employing a uniform methodology.

3. Should there be a "locational requirement" for resources used to satisfy capacity obligations, and if so, should individual load serving entities (LSEs) be required to demonstrate a share of the overall locational requirement?

In general, a "locational requirement" refers to a requirement that an individual LSE procure a certain percentage of its capacity (that is, a share of the LCR) from resources located within the LRZ that the LSE operates in. MISO does not currently require LSEs to meet their individual share of the overall locational requirement unless the LSE chooses to use a FRAP.

[8] Some commenters also attempted to address what the method should entail. That issue is for discussion in the technical conferences, as is the issue of confidentiality.

The Staff, Wolverine, WPPI, MMEA, ABATE, CNE, and Energy Michigan oppose a locational requirement that would be applied to individual LSEs. The Staff contends that there should be no locational requirement for 2018, and recommends that, if a requirement is adopted, then the Commission should phase it in over several years with the initial year at least five years in the future. Cloverland, DTE Electric, Consumers, MEGA, the RCG, and I&M support a locational requirement placed on individual LSEs to demonstrate a share of the capacity requirements within the Zone.

The premise underlying Section 6w is to safeguard Michigan's long-term resource adequacy and ensure that all providers contribute to reliability in the state. In order to do that, the law requires the Commission to set forward capacity obligations for electric providers in the state. While the law recognizes the association between the MISO capacity construct and the new capacity obligations to be set by the Commission to ensure resource adequacy over the long term, this does not mean that the Commission's framework is bound by the minimum requirements of MISO. To the contrary, the Legislature recognized that there is no existing obligation on providers to show that over the long haul there is adequate electricity supply to meet customer demand. The Commission is required to establish capacity obligations for the period four years in the future, that electric providers will be required to meet. MISO has no requirements four years out – not even mandatory reporting of the LSE's capacity resources over that timeframe. Moreover, Section 6w(8)(c) requires the Commission, "in order to determine the capacity obligations" to "request that the appropriate independent system operator provide technical assistance in determining the local clearing requirement and the planning reserve margin requirement." The definitions of LCR and PRMR in Section 6w(12) explicitly acknowledge the role of the Commission in setting the LCR and PRMR under subsection (8).

Further, the law clearly provides that "capacity obligations" includes a local clearing requirement. As defined in Section 6w(12)(d), "local clearing requirement" means "the amount of capacity resources required to be in the local resource zone in which the electric provider's demand is served to ensure reliability in that zone as determined by the appropriate independent system operator for the local resource zone in which the electric provider's demand is served and by the commission under subsection (8)." As noted above, in requesting assistance from MISO in determining capacity obligations, the Commission is tasked with requesting technical assistance in determining this local clearing requirement.

Section 6w(8) also requires individual electric providers to demonstrate to the Commission that they can meet capacity obligations. The Commission is directed to require each electric provider to demonstrate that it "owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable" four years into the future. These capacity obligations necessarily include a local clearing requirement.

It is clear that the statute requires the Commission to create capacity obligations, that these capacity obligations include a locational requirement, and that the Commission, in setting locational capacity obligations, is allowed to require a demonstration by individual electric providers that the resources that they use to meet their capacity obligations meet a local clearing requirement. The Commission acknowledges the inter-relatedness of the MISO and Section 6w capacity demonstration processes, but also points out that these are distinct activities. These activities should be harmonized to the extent practicable, but the fundamental responsibility of the Commission is to meet Michigan's statutory obligations.

Thus, the Commission finds that a locational requirement is required under Section 6w and that a locational requirement applicable to individual LSEs is allowed as part of the capacity obligations set forth by the Commission pursuant to Section 6w in order to ensure all providers contribute to long-term resource adequacy in the state. The Commission disagrees with commenters who claim there will be no impacts on affordability or reliability if the MISO LCR is not met. There is also an equity consideration if only some LSEs are contributing to the locational requirement. At the same time, the Commission is not convinced that allocating a proportional share of the LCR among individual LSEs is the most equitable or reasonable allocation at this time. Electric utilities with all or nearly all local generation that have served retail customers as the incumbent provider would have a distinct and disproportionate advantage moving into a system where the LCR as a whole is allocated on a proportional basis four years into the future. The LCR was first put into effect in 2012, long after the vast majority of generation in Zone 7 was placed into service.

The Commission is requesting technical assistance from MISO in determining capacity obligations as part of this process. Further, the Commission directs the Staff to work with MISO and other parties to explore an equitable manner for allocating the LCR among LSEs. Several guiding factors should inform the proper allocation approach:

- There is almost inevitably a need for new capacity supplies in the state to meet the LCR in the near and the long term, and to maintain local resource adequacy.
- There can be a long lead time for entities to be able to construct and/or contract for such capacity; bringing on new generation and other resources is a long-term commitment.

- It is reasonable to allow for imports from outside the Zone to expand the pool of capacity resources and potentially lower costs *so long as* transmission is available and the overall LCR and PRMR can be met over time to protect reliability in the state.[9]

- Uncertainty in load forecasts, generator performance, transmission limits, and other factors can affect the local reliability requirement and LCR calculations by MISO over time; these factors present the risk of potentially over- or under-procuring local capacity supplies, depending on the design and allocation of the capacity obligations.

- Customers and providers should be able to make informed decisions about their options as the state transitions to new requirements.

- Customers of all LSEs should contribute to the state's capacity needs based on objective criteria and should be given a level playing field to the extent possible.

In light of these considerations, the Commission directs the Staff and stakeholders to explore and attempt to define an allocation methodology for the locational element in the remaining technical conferences. One approach is to phase-in requirements over time, recognizing entities are coming into the system in dramatically different positions, and the time it will take to reasonably achieve compliance through the construction or contracting of new zonal capacity resources. Another approach is to: (1) identify the incremental capacity needed in the Zone in order to meet the PRMR and LCR over a longer term planning horizon to account for expected retirements and planning and construction lead time, and (2) allocate a proportional share of that incremental zonal capacity need among all LSEs in order for all entities to contribute directly by owning or contracting for an equivalent amount of local capacity. This methodology could be combined with a base-level allocation tied to a reasonable fraction of the proportional share of the overall LCR.

[9] While resources throughout the MISO footprint can be used to meet PRMR, nearly all new capacity may need to be located within Zone 7, given the Zone's capacity position relative to the MISO LCR, announced power plant retirements, and the fact that MISO's current Zone 7 LCR is approximately 95% of the PRMR. This could, however, change based on the dynamic nature of the generation and transmission system and MISO rules and analyses.

The Commission also requests that stakeholders and the Staff explore, through the lens of the Section 6w framework, issues related to potential changes in load forecasts, customer switching, and supply arrangements. Consumers and others have suggested that the PRMR portion of the capacity obligations under Section 6w be set at 95% of the MISO PRMR for each of the subsequent four years, to allow contracting through the MISO annual auction or other means through the planning years. This is a hedging strategy that could mitigate risk of over-procurement while still ensuring that a large proportion of capacity is secured well in advance of the planning year. Another option is to require a lower percentage of the PRMR be met farther out in time, but to require providers to true up the residual capacity for the interim years on a rolling basis as part of the Commission's annual capacity demonstration process. For example, and for illustrative purposes only:

MISO Sample PRMR = 22,000 zonal resource credits

	Year 1 demo	Year 2 demo	Year 3 demo	Year 4 demo …
PY 2018/2019	100% of LSE's PRMR	N/A	N/A	
PY 2019/2020	95%	+5% (now at 100% of LSE's PRMR)	N/A	
PY 2020/2021	90%	+5% (now at 95%)	+5% (now 100%)	
PY 2021/2022	85%	+5% (now at 90%)	+5% (now 95%)	N/A
PY 2022/2023	N/A	85%	+5% (now 90%)	+5% (now 100%)
PY 2023/2024	N/A	N/A	85%	+5% (now 95%)
PY 2024/2025 …	N/A	N/A	N/A	+5% (now 90%)

Again, the Commission seeks input on these options and other alternatives that can provide a credible basis for resource adequacy over the long term. The Commission acknowledges that

consensus might not be achievable on all issues, but encourages the parties to identify and examine all appropriate options. Accordingly, the Commission looks forward to the August 1, 2017 report on the technical conference results.

THEREFORE, IT IS ORDERED that:

A. Capacity demonstrations shall be filed in accordance with the deadlines established in MCL 460.6w(8).

B. A uniform methodology for capacity demonstration shall be applied to all electric providers and service territories, as outlined in this order.

C. The remaining technical conferences shall be used to address the appropriate design of a locational requirement for capacity obligations under Section 6w.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of June 15, 2017.

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Kavita Kale, Executive Secretary